



DEPARTMENT OF ENVIRONMENTAL QUALITY

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February 7, 2007

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Gentlemen:

This letter is Louisiana's official response to EPA regarding the Energy Policy Act (Energy Act) requirements of Financial Responsibility or Secondary Containment for Underground Storage Tank Systems. The Louisiana Department of Environmental Quality (LDEQ) has evaluated the Energy Policy Act requirements and the EPA guidance for Secondary Containment and Financial Responsibility. We believe that the best option for Louisiana is a combination of both. This approach will require financial responsibility in the short term, if adequate insurance mechanisms are available, with a phasing in of secondary containment. Although we have not yet implemented this approach, we are diligently working to adopt these requirements.

In order to accomplish this task, legislation may be necessary; at the very least, rulemaking will be required. The Louisiana Constitution mandates the type of legislation introduced in successive years. In odd numbered years, the legislature is restricted to fiscal only matters, subject to each member having five personal bills that may be introduced on non-fiscal issues. Given this restriction, the next opportunity to have legislation introduced will occur during the regular 2008 Legislative Session. If it is determined that legislation is not required, the rulemaking process may require 12 months or more to complete. As a result, LDEQ believes it can meet or exceed the Energy Act requirements regarding Secondary Containment and Financial Responsibility by January 1, 2009.

ENVIRONMENTAL ASSESSMENT

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Although Louisiana, as well as many other states, will not meet the February 8, 2007, target date for implementation of Secondary Containment or Financial Responsibility; there are circumstances that have contributed to this situation. Final guidance on Financial Responsibility was not issued until January 23, 2007. EPA's decision to interpret the law through guidance rather than regulation has limited our ability to perform expedited rulemaking. Louisiana law requires rulemaking rather than guidance when placing requirements upon the regulatory community. Adopting rules that are not identical to federal regulation is more time consuming, contentious and requires cost benefit/risk assessment analysis. In the absence of federal regulations, the Louisiana Administrative Code dictates that we perform a thorough evaluation of the availability and the cost of the insurance mechanisms required for financial responsibility prior to adoption. We are unsure that the "life of component" insurance envisioned by the Energy Act will be available in Louisiana. If it does become available, the cost is uncertain. The late issuance of the guidance on financial responsibility has hampered our ability to obtain this information prior to the target date. In addition, adopting the secondary containment option will also require regulation changes and a cost benefit/risk assessment analysis for rulemaking.

As you know, Congress has not appropriated any funds to the States to implement the mandates of the Energy Act. Without accurate funding information it will be difficult to provide an accurate cost benefit analysis necessary for regulation passage. Requiring implementation of the Energy Policy Act without identifiable funding sources constitutes an unfunded mandate. As we attempt to recover from the devastation of Hurricanes Katrina and Rita, a detailed evaluation of all costs is imperative. Louisiana is a highly rural State with a large coastal area that may require evacuation during hurricane seasons. We must evaluate the cost of meeting the Energy Act requirements and balance our efforts to maintain adequate fuel supplies in rural and coastal areas, and to ensure the integrity of the fuel supply along evacuation routes.

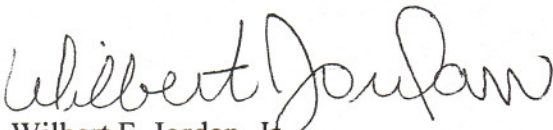
To further outline Louisiana's efforts, LDEQ recently reorganized to form a specific Underground Storage Tank Division within the Office of Environmental Assessment. This new Division will provide an organizational structure that will implement the requirements of the Energy Act. In addition, LDEQ has assembled a work group with Louisiana's Oil Marketers Association and representatives of UST system installers, to collaborate on the implementation of the Energy Act and assist in expediting legislation and/or rulemaking that may be required. We have been meeting regularly to develop regulations that are environmentally protective, fair and cost effective. LDEQ believes that the formation of this work group and its efforts to reach a consensus are a sign of Louisiana's commitment to meet the requirements of the Energy Act.

If you have any questions, or if this letter does not satisfy the requirements of the final Financial Responsibility or Secondary Containment guidance provided by EPA, please contact me at (225) 219-3233 or via email wilbert.jordan@la.gov.

Richard Greene, Regional Administrator
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We look forward to working with you as we prepare to adopt these important requirements.

With kind regards,



Wilbert F. Jordan, Jr.
Assistant Secretary

sc

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